Jeffrey M. Edelson, OSB No. 880407
JeffEdelson@mhgm.com
Stacy R. Owen, OSB No. 074826
StacyOwen@mhgm.com
MARKOWITZ, HERBOLD, GLADE
& MEHLHAF, P.C.
Suite 3000 Pacwest Center
1211 S.W. Fifth Avenue
Portland, OR 97204
Tel: (503) 295-3085
Fax: (503) 323-9105

Of Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VIRGINIA LINTHICUM,

Plaintiff,

v.

WHEELS FINANCIAL GROUP INC., a California corporation doing business as 800LoanMart,

Defendant.

No. : CV08-675-KI

DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS (Breach of Contract, Attorney Fees)

Defendant answers plaintiff's complaint as follows:

1.

Defendant is without information sufficient to form a belief as to the allegations in paragraph 1 of the complaint and, therefore, deny the same.

2.

Defendant admits the allegations in paragraph 2 of the complaint.

3.

Defendant admits that it does business as 800LoanMart providing auto title loans to consumers. Defendant denies the remaining allegations in paragraph 3 of the complaint.

4.

With respect to paragraph 4 of plaintiff's complaint, defendant admits that on or before and after April 30, 2008 plaintiff owes money to defendant for a loan.

5.

With respect to paragraph 5 of plaintiff's complaint, defendant incorporates the answers to paragraphs 1 through 4 above.

6.

Defendant denies the allegations in paragraphs 6 through 14 of the complaint.

7.

With respect to paragraph 15 of plaintiff's complaint, defendant incorporates the answers to paragraphs 1 through 4 above.

8.

Defendant denies the allegations in paragraphs 16 through 18 of the complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

9.

The complaint, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and further fails to state facts sufficient to entitle the plaintiff to the relief sought, or to any other relief whatsoever, from defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

10.

Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation, including, but not limited to, ORS 646.641(3) and ORS 12.110(1).

THIRD AFFIRMATIVE DEFENSE

(Responsibility)

11.

Plaintiff's damages, if any, were not caused by defendant, but by another person or entity for whom or for which defendant is not responsible.

FACTS COMMON TO COUNTERCLAIMS

12.

On April 26, 2004, Ms. Virginia Beth Rooks Croft (now known as Virginia Linthicum, the plaintiff) and Mr. George Trevis Rooks entered into Loan No. 8634 (the "Loan") with 800LoanMart. Borrowers provided title to a 1998 Chevrolet 1500 pickup as security for the Loan.

13.

Mr. and Mrs. Rooks jointly and severally promised to pay 800LoanMart the principal amount of $2,500 together with any charges computed upon unpaid principal balances as described in the Loan.

14.

The Loan provided that any default in the payment of the full amount of any installment of principal and charges thereof could, at the option of 800LoanMart, render the entire unpaid balance and accrued charges thereon due and payable.

15.

The final payment due date was June 5, 2006. Despite repeated attempts to contact Mr. Rooks and Ms. Linthicum, 800LoanMart has not received any payments on the Loan since February 16, 2005. The current balance on the Loan is $8,643.85, including interest and fees.

COUNTERCLAIMS

FIRST COUNTERCLAIM

(Breach of Contract)

Defendant realleges and incorporates by reference the allegations in paragraphs 12 through 15 above.

16.

The parties entered into a valid contract on April 26, 2004.

17.

Plaintiff materially breached the contract by failing to pay the balance due.

18.

As the result of plaintiff's breach of the contract, defendant suffered damages in the amount of at least $8,643.85, together with prejudgment and post judgment interest.

SECOND COUNTERCLAIM

(Attorney Fees)

Pursuant to ORS 646.641(2) defendant is entitled to an award against plaintiff of its attorney fees reasonably incurred.

WHEREFORE, defendant requests the entry of a judgment as follows:

1. Dismissing plaintiff's claims against defendant with prejudice;

2. Awarding damages against plaintiff in favor of defendant in an amount to be determined at trial of not less than $8,643.85, together with prejudgment and post judgment interest at the contract rate of interest.

3. Awarding defendant its reasonably incurred attorney fees;

4. Awarding defendant its reasonable costs and disbursements incurred herein; and

5. Awarding defendant such further relief as the court deems appropriate.

DATED this 11th day of June, 2008.

MARKOWITZ, HERBOLD, GLADE
& MEHLHAF, P.C.

By: */s/ Stacy R. Owen*

Stacy R. Owen
OSB #074826
(503) 295-3085
Of Attorneys for Defendant

LINT\155471

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2008, I have made service of the foregoing **ANSWER** on the party/ies listed below in the manner indicated:

Bret A. Knewtson
3000 NW Stucki Place, Suite 230-M
Hillsboro, OR 97124

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email
- ☒ Electronically via USDC CM/ECF system

DATED this 11th day of June, 2008.

/s/ Stacy R. Owen
Stacy R. Owen
OSB #074826
Attorney for Defendant